

EXHIBIT T

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BANK LEUMI USA,

Plaintiff,

– against –

DAVID EHRLICH, ANGELA TYKOCKI,
ENRIQUE EHRLICH, and
SARA GOLDSTEIN,

Defendants.

Case No. 12-CV-4423 (AJN)

ECF Case

DECLARATION OF DONALD L. BITTKER

DONALD L. BITTKER, pursuant to 28 U.S.C. § 1746, declares:

1. I am an attorney admitted to the bar of the State of New York. I am a First Vice President and the Deputy General Counsel of Plaintiff Bank Leumi USA (“BLUSA”) and submit this Declaration in support of BLUSA’s opposition to the motion to dismiss the complaint filed by David Ehrlich, Angela Tykocki, Enrique Ehrlich, and Sara Goldstein (collectively, “Defendants”) in the above-referenced action. I have been employed in BLUSA’s Legal Department for more than 24 years. The facts set forth in this Declaration are based on my personal knowledge or inquiries which I made of appropriate BLUSA employees.

BLUSA’S NEW YORK CONTACTS

2. BLUSA is a full-service commercial bank providing financial services to importers and exporters, manufacturers, distributors, and retailers in such diverse industries as diamonds and jewelry, textiles and apparel, food and commodities, entertainment, real estate, and high technology.

3. In addition, BLUSA offers U.S. and international private banking services, as well as a full range of securities and insurance products through its brokerage subsidiary, Leumi Investment Services Inc.

4. BLUSA's head office is at 579 Fifth Avenue, New York, New York 10017.

5. BLUSA's CEO and most of its senior management work out of this office or other locations in New York, New York.

6. BLUSA employed approximately 470 employees as of June 30, 2012 (full-time equivalent basis), all of whom are based in the United States and the majority of whom are based in New York, New York.

7. BLUSA has no offices, branches, or agencies outside of the United States other than a "name-plate" office in the Cayman Islands and a representative office in Tel Aviv, neither of which are staffed by BLUSA employees. BLUSA has no employees in Uruguay.

8. BLUSA is organized under the laws of the State of New York. More than 99 percent of its shares are owned by its parent Bank Leumi le-Israel Corporation, a New York-chartered business corporation. BLUSA and Bank Leumi le-Israel Corporation are separate legal entities.

9. Bank Leumi le-Israel Corporation's parent is Bank Leumi le-Israel B.M., which is organized under the laws of the State of Israel.

10. Bank Leumi le-Israel B.M. owns subsidiary banks serving the needs of customers in the country where the subsidiary bank is chartered. One of these subsidiary banks is Leumi (Latin America) S.A. with an office in Montevideo, Uruguay and another office in Punta del Este, Uruguay. Leumi (Latin America) is a wholly-owned subsidiary of Bank Leumi le-Israel, B.M.

11. From time to time, persons located in Uruguay may wish to open an account at BLUSA. The potential customer may contact Leumi (Latin America) S.A. to obtain account opening documentation, which is, upon completion by the potential customer, sent to BLUSA for processing. At the time Defendants opened accounts at BLUSA, the account opening documentation was sent to BLUSA in New York. Today account opening documentation is sent to the BLUSA office in Aventura, Florida.

12. At the time Defendants opened accounts at BLUSA, and continuing until today, all decisions regarding opening a new account at BLUSA are made at a BLUSA office in the United States. Decisions regarding the opening of Defendants' accounts at BLUSA were made in New York. At the time Defendants opened accounts at BLUSA, and continuing until today, Leumi (Latin America) S.A. neither had nor has authority to make decisions regarding opening accounts at BLUSA.

13. After an account application is approved, the account at BLUSA is opened on the books of BLUSA in New York.

14. Accounts recently opened at BLUSA for non-U.S. residents are governed by BLUSA's International Financial Services Arrangements booklet.

15. BLUSA customers may purchase and sell securities by completing and signing an order form. The trade information is transmitted by a relationship officer at Leumi (Latin America) S.A. to the BLUSA Trading Desk in New York, where the trade is executed.

DEFENDANTS OPEN ACCOUNTS WITH BLUSA

16. Defendants opened three accounts with BLUSA. These accounts are in the names of (i) David Ehrlich and Angela Tykocki; (ii) Enrique Ehrlich and Sara Goldstein; and (iii) Enrique Ehrlich and David Ehrlich.

17. As part of the account opening process, on or about September 17, 2002, David Ehrlich and his wife Angela Tykocki completed and signed a BLUSA International Account Application (“Account Application 1”). A true and complete copy of Account Application 1 is attached as Exhibit A.

18. As part of the account opening process, on or about September 17, 2002, Enrique Ehrlich and his wife Sara Goldstein completed and signed a BLUSA International Account Application (“Account Application 2”). A true and complete copy of Account Application 2 is attached as Exhibit B.

19. As part of the account opening process, on or about September 17, 2002, Enrique Ehrlich and David Ehrlich completed and signed a BLUSA International Account Application (“Account Application 3”) (Account Application 1, Account Application 2, Account Application 3 collectively, the “Account Applications”). A true and complete copy of Account Application 3 is attached as Exhibit C.

20. In September 2002 BLUSA’s practice was to provide to each applicant completing and signing a BLUSA International Account Application a copy of the International Account Terms.

21. Defendants each confirmed “receiving a copy of, and agreeing to, the International Account Terms.” (Ex. A at 6; Ex. B at 6, Ex. C at 6.)

22. Defendants each manifested their consent by signing their names directly below this statement. (Ex. A at 6; Ex. B at 6, Ex. C at 6.)

23. After signature by Defendants, the Account Applications, which include Defendants agreement to the International Account Terms, were sent to BLUSA in New York.

24. Based on the statements and agreements contained in the Account Applications, BLUSA opened accounts for Defendants in New York.

25. The International Account Terms and the other account opening documents, including the Account Applications, constitute the agreement (“Agreement”) between BLUSA and Defendants with respect to Defendants’ accounts at BLUSA.

26. The Agreement is governed by New York law and the parties agreed to the following provision regarding jurisdiction, venue, and service of process in the event of a dispute:

Governing Law; Jurisdiction; Service of Process – THIS AGREEMENT WILL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE UNITED STATES OF AMERICA.

Any legal proceeding arising from or in any way related to this Agreement may be brought in, and you hereby consent to personal jurisdiction and venue of, any state or federal court located in New York County, New York, U.S.A. You hereby consent to the service of process in any such action, by mailing a copy of such process to you at your last known address shown on our records.

(International Account Terms at 8 (emphasis and caps in original).) A true and complete copy of the International Account Terms is attached as Exhibit D.¹

¹ The terms “you” and “your” are defined as “each and every individual or entity signing the Account Application as a ‘Customer[,]’” (Ex. D at 1), and, therefore, include each Defendant. The term “our” is defined as “Bank Leumi USA and its successors and assigns.” (Ex. D. at 1.)

27. Because BLUSA provides services to customers who reside outside the United States, BLUSA includes this forum selection clause to reduce substantially the uncertainty associated with potential legal claims relating to, or arising out of, its relationship with customers.

28. The clause designates “any state or federal court located in New York County, New York, U.S.A.” as the forum for such claims because BLUSA’s head office is located in New York, New York.

29. BLUSA also includes a New York choice-of-law clause and provisions relating to a customer’s consent to personal jurisdiction, venue, and service of process to reduce substantially the uncertainty associated with potential legal claims relating to, or arising out of, its relationship with customers and the potential costs of litigation.

30. BLUSA would not have entered into an account relationship with Defendants if the forum selection clause, the New York choice-of-law clause, and Defendants’ consent to jurisdiction, venue, and service of process were not part of the agreement between Defendants and BLUSA.

31. The International Account Terms is a document separate from the Account Application because it allows BLUSA to use standard terms applicable to multiple types of accounts with its customers. Such arrangements are apparently common in the industry.

32. The International Account Terms were superseded for accounts opened after 2002 by the International Financial Services Arrangements.

**DEFENDANTS PURCHASE SECURITIES
THROUGH THEIR BLUSA ACCOUNTS**

33. Over the course of their investment history, Defendants purchased at least a dozen debt securities for their BLUSA accounts.

34. Defendants' order to purchase or sell was transmitted by a relationship officer at Leumi (Latin America) S.A. to the BLUSA Trading Desk in New York, where the trade was executed.

35. Documents relating to Defendants' order to purchase or sell, and the execution thereof, are maintained at BLUSA offices in the United States.

36. On or about February 21, 2008, Defendants completed and signed order forms for the purchase of a total of \$750,000.00 face value (at a cost of approximately \$700,760.43) of bonds issued by Kaupthing Bank for their accounts at BLUSA (the "Bonds").

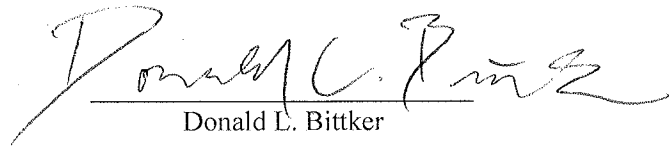
37. The purchase-specific information in the completed and signed order forms, which identify BLUSA in the header, was transmitted to BLUSA in New York. True and complete copies of the order forms are attached as Exhibit E.

38. BLUSA executed Defendants' orders to purchase the Bonds in New York.

39. Upon settlement, the Bonds were held, and continue to be held, in Defendants' BLUSA accounts.

40. Documents and witnesses relating to Defendants' purchase orders for the Bonds, and the execution thereof, are located at BLUSA offices in the United States.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on the 15th day of August 2012.


Donald L. Bittker